

Application No. 10/277,121

REMARKSRejection of Claims 1-4, 6-13, and 15-20 Under 35 U.S.C. §102(b)

The Examiner rejects the above claims under 35 U.S.C. §102(b) as being anticipated by USPN 2,254,199 to Baltuch. Applicant respectfully traverses the above rejection.

In regard to claims 1, 11, 13, 16 and 20, Applicant has made amendments to more particularly define the claimed invention as having a non-moveable blade with a chordal portion. Additionally, Applicant has clarified in claims 1, 11, 16 and 20 that the C-shaped grasping portion includes an opening having a distance or width generally less than a diameter or width of a tube receiving region of the grasping portion, which permits a snap engagement of the tubing in the device. Exemplary support for the amended claims may be found on page 10, second and third full paragraphs, and page 11, second and third full paragraphs. Additional support may be found in Figures 3 through 5. Support for the grasping portion structure may be found on page 8, first full paragraph of the specification.

It is noted that Baltuch does not disclose a tubing cutter having a non-movable blade with a chordal portion extending into the tubing cutter grasping portion as in the amended claims. Baltuch discloses that a "razor blade 19 abuts against the leaf spring 18; thus the razor blade can be pushed (emphasis added) further into the head against the resistance of the spring 18." (see col. 2, lns. 13-16). Baltuch also states that "it will be understood from the foregoing explanation that the edge of the blade 19 will move across the slot 23 when the cord presses it backwards against the spring 18." (see col. 2, lns. 30-33).

It is also noted that Baltuch does not disclose a cutter grasping portion having an opening and a tube receiving portion, wherein the opening has a distance less than a diameter of the tube

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receiving portion. As is readily apparent from Figures 1 and 3 of the Baltuch patent, the slot 23 does not have an opening with a distance less than a diameter of a tube receiving portion. As a result, a twine inserted into the slot 23 would not snappingly engage the slot.

The Examiner also rejects claims 11-13 under 35 U.S.C. §102(b) as being anticipated by USPN 3,636,629 to Baun. Applicant also respectfully traverses this rejection. Applicant contends that the application to Baun does not anticipate the claimed invention for the same reasons that Baltuch is not anticipating prior art. In particular, Baun does not disclose a non-movable blade or a gripping portion with an opening and tube receiving portion of differing dimensions. In regard to the blade, Baun specifically states in the specification that, "To put the blade 12 into its working position on the holder 14-or to remove the blade-it is first necessary to place it in the position shown at 12a in FIG. 1." (see col. 2, lns. 68-70). Thus, the blade disclosed in Baun is moveable and therefore cannot anticipate the claimed invention. In regard to the gripping portion, Figures 1, 3 and 4 of Baun clearly disclose an indent 18 having a uniform distance or diameter from its opening to a hose receiving portion, unlike the claimed invention.

In view of the foregoing, Applicant respectfully requests withdrawal of the rejection of claims 1-4, 6-13, and 15-20 under 35 USC §102(b) as being anticipated by Baltuch or Baun. In regard to the remaining rejections of the dependent claims, Applicant contends that since they depend from allowable independent claims 1, 11, and 16 they are likewise in condition for allowance.

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**Rejection of Claims 1-4, 7-10 and 15-20 Under 35 U.S.C. §103(a)**

The Examiner rejects claim 15 under 35 U.S.C. §103(a) as being unpatentable over Baltuch in view of USPN 6,434,776 to Pfeiffer et al., hereafter Pfeiffer. The Examiner states that Pfeiffer teaches a gripping portion formed in the body by at least one arcuate depression for human handling of the cutter.

The Applicant respectfully traverses the rejection of claim 15 under 35 U.S.C. §103(a). As discussed above, Applicant has amended claim 15 to clarify that the blade is non-movable and that the C-shaped grasping portion has a tube receiving region and an opening, with the opening having a distance or width generally less than a diameter or width of the tube receiving region, such that the C-shaped grasping portion is capable of snap engagement with the tubing. Neither Baltuch nor Pfeiffer teaches a non-movable blade for cutting or a grasping portion having a diameter or width less than a distance or width of an opening. Additionally, the blade disclosed in Pfeiffer is for scraping not for cutting. The Pfeiffer device receives tubing into a closed cylindrical passage, thereby indicating that the tubing must have a diameter less than or smaller than the passage. This is particularly exemplified in the specification of the Pfeiffer patent which states "The passage 20 has an inside diameter D which is adapted in such a manner that the device 10 can be passed around the tubes 112 and 120 whose external surfaces 115 and 125 are to be scraped, that is to say, **slightly larger than the outside diameter of those tubes** (emphasis added)." (see col. 4, lns. 13-24). As such, the Pfeiffer patent teaches away from combination with an open ended tubing cutter to arrive at the snap engagement of the claimed invention.

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It is respectfully asserted that combining the moveable blade of Baltuch with the recess of Pfeiffer without such a suggestion or teaching within Baltuch or Pfeiffer would be an inappropriate hindsight-based obviousness analysis as it would utilize the Applicant's own invention as a template to reconstruct the invention from the prior art. See Ecolochem, Inc. v. Southern Edison, 56 USPQ2d 1065, 1073 (Fed. Cir. 2000); Ruiz v. A.B. Chance Co., 57 USPQ2d 1161, 1167 (Fed. Cir. 2000) ("In order to prevent a hindsight-based obviousness analysis, we have clearly established that the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to combine the references.").

The Examiner also rejects claims 1-4, 7-10, and 15-20 under 35 U.S.C. §103(a) as being unpatentable over Baun in view of Baltuch. Applicant contends that the present invention is not unpatentable over Baun in view of Baltuch for the same reasons that the present invention is not anticipated by either reference. As discussed above, neither reference discloses, either individually or in combination, a tube receiving region and an opening, with the opening having a distance or width generally less than a diameter or width of the tube receiving region. The difference in the dimensions of the claimed invention facilitates or permits the snap engagement of the tubing in the tube receiving portion.

The Examiner also rejects claim 15 under 35 U.S.C. §103(a) as being unpatentable over Baun in view of Baltuch, as applied to claim 1, and further in view of Pfeiffer. Applicant contends that the present invention is not unpatentable over Baun in view of Baltuch, as to claim 1, and further in view of Pfeiffer for the reasons stated above. In particular, none of the references discloses or teaches, either individually or in any combination, a tube receiving region

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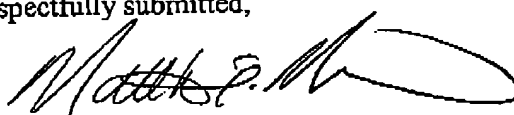
and an opening, with the opening having a distance or width generally less than a diameter or width of the tube receiving region.

Consequently, Applicant respectfully requests withdrawal of the rejection of claims 1-4, 7-10 and 15-20 under 35 USC §103(a) in view of Baltuch and Pfeiffer, the rejection of claims 1-4, 7-10, and 15-20 under 35 U.S.C. §103(a) in view of Baun and Baltuch, and the rejection of claim 15 in view of Baun, Baltuch and Pfeiffer. In light of the Applicant's belief that the independent claims are in condition for allowance, the Applicant also requests that the Examiner's rejection of all dependent claims, not specifically addressed, also be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance.

Favorable consideration and prompt allowance of the application are respectfully requested. The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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